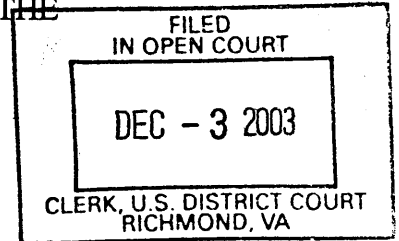


IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Richmond Division



UNITED STATES OF AMERICA

v.

BEN JOHN BARBOT,

Defendant.

CRIMINAL NO. 3:03CR272

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Brian R. Hood, Assistant United States Attorney, and the defendant, BEN JOHN BARBOT, and the defendant's counsel, Henry W. Asbill, Esquire, and William B. Moffitt, Esquire, pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, BEN JOHN BARBOT, agrees to plead guilty to Counts Two and Three of the pending Indictment. Count Two charges the defendant with Criminal Infringement of Copyright, in violation of Title 18 United States Code, Section 2319, and Title 17 U.S.C. Section 506(a)(i). The maximum penalty for this offense is a maximum term of five (5) years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three (3) years of supervised release. Count Three charges the defendant with Trafficking In Counterfeit Goods, in violation of Title 18 United States Code, Section 2320(a). The maximum penalty for this offense

is a maximum term of ten (10) years of imprisonment, a fine of \$2,000,000, full restitution, a special assessment, and three (3) years of supervised release. The defendant is aware that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Pursuant to 18 U.S.C. § 3663A(a), the defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. At this time, the defendant and Government are aware that the following victim has suffered at least the following loss:

**Microsoft Corporation
Attention: Tamara McBride
One Microsoft Way
Redmond, WA 98052**

\$1,700,000.00

The defendant acknowledges that the Mandatory Victims Restitution Act requires full restitution, and that the Court may determine at sentencing that the defendant owes a higher restitution sum to Microsoft Corporation, as well as any other victims identified by the Court.

The defendant further acknowledges that the offenses giving rise to this plea agreement are offenses against property pursuant to 18 U.S.C. § 3663A(c)(1). Moreover, pursuant to 18 U.S.C. § 3663A(c)(2), the defendant acknowledges that an offense described in 18 U.S.C. § 3663A(c)(1) gave rise to this plea agreement.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has

jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment, criminal information or statement of facts. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in the indictment, criminal information or statement of facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

7. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

8. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution that may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

9. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

10. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

11. The government agrees not to seek forfeiture for any assets in which the defendant has an interest, including but not limited to the assets listed in paragraph 12 below, which are paid to the Clerk prior to sentencing to be applied to restitution in this case.

12. In the event that the defendant does not satisfy the provisions of paragraph 11 above, the defendant agrees to forfeit all interest in any assets derived from or related to the violations to which the defendant is pleading guilty. The defendant specifically agrees to forfeit all interest in the assets listed below, regardless of whether they are derived from or related to the violations to which the defendant is pleading guilty:

- a. the contents of Wachovia Securities account number 1330-0413 in the names of Ben J. Barbot and Mary C. Barbot;

- b. the contents of Wachovia Securities account number 1462-0325 in the name of Ben J. Barbot;
- c. \$337,354.47 seized on or about January 15, 2003 from a First Union Bank account in the name of Ben Barbot;
- d. the real property and improvements known as 2432 Stone Post Terrace, Henrico County, Virginia (Tax parcel number 731-752-6038-032);
- e. \$140,000.00 from the equity in the real property and improvements known as 2602 Foxbush Court, Henrico County, Virginia;
- f. a 2000 Honda Accord and a 1999 Honda Civic owned by the defendant;
- g. approximately \$100,000.00 in moneys that the defendant used to fund an education savings plan;
- h. approximately \$80,000.00 from an Individual Retirement Account in the name of the defendant;
- i. a sum of \$6,000 representing the fair market value of a Ford Expedition automobile owned by the defendant.

13. The defendant agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

14. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out

in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as property derived from or involved in illegal conduct.

15. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

16. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

17. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

18. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea

agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

19. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

20. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

21. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements, which may apply in my case. I have read this plea agreement and

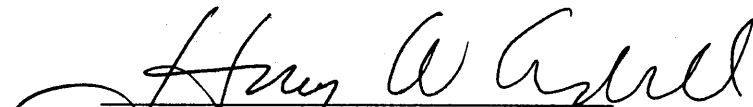
carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date 12/3/03

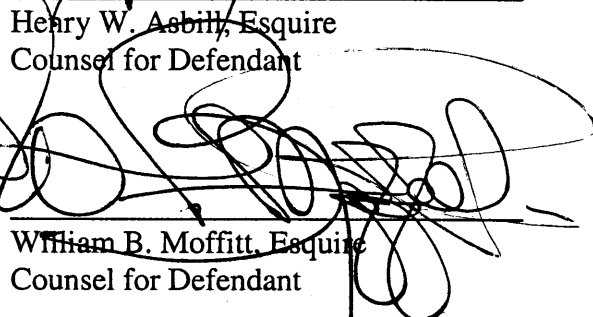

BEN JOHN BARBOT
Defendant

22. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date 12/3/03


Henry W. Asbill, Esquire
Counsel for Defendant

Date 12/3/03


William B. Moffitt, Esquire
Counsel for Defendant

Respectfully submitted,

PAUL J. McNULTY
United States Attorney

By:



Brian R. Hood
Assistant United States Attorney

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	3:03CR272
DEFENDANT'S NAME:	BEN JOHN BARBOT
PAY THIS AMOUNT:	\$200.00

INSTRUCTIONS:

1. MAKE CHECK OR MONEY ORDER PAYABLE TO:
CLERK, U.S. DISTRICT COURT
2. PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR
SENTENCING DATE
3. PAYMENT SHOULD BE SENT TO:

	In person (9 AM to 4 PM)	By mail:
Richmond cases:	Clerk, U.S. District Court 1000 E. Main Street, #307 Richmond, VA 23219	

4. INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER
5. ENCLOSE THIS COUPON TO INSURE
PROPER and PROMPT APPLICATION OF PAYMENT